

# SPEECH

OF

## HON. LYMAN TRUMBULL, OF ILLINOIS,

ON INTRODUCING

A BILL TO CONFISCATE THE PROPERTY OF REBELS AND  
FREE THEIR SLAVES;

DELIVERED

IN THE SENATE OF THE UNITED STATES, DECEMBER 5, 1861.

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## SPEECH.

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Senate bill No. 78, for the confiscation of the property of rebels, and giving freedom to the persons they hold in slavery, having been read a first and second time by its title—

**Mr. TRUMBULL** said:

**Mr. PRESIDENT:** In presenting this bill to the consideration of the Senate, I desire to accompany it with some remarks explanatory of its character and the principles on which it is based.

As its title imports, it is a bill for confiscating the property, and giving freedom to the slaves, of rebels. It provides for the absolute and complete forfeiture forever to the United States of every species of property, real and personal, and where-soever situated within the United States, belonging to persons beyond the jurisdiction of the United States, or beyond the reach of civil process in the ordinary mode of judicial proceeding in consequence of the present rebellion, who, during its existence, shall take up arms against the United States, or in anywise aid or abet the rebellion; this forfeiture to be enforced against property in the rebellious districts through the military power, and against property in the other portions of the United States in which the judicial power is not obstructed by the rebellion, through the courts; and the proceeds of the property of each individual seized and forfeited, subject to the just claims of his loyal creditors, to be held for the benefit of loyal citizens despoiled of their property by the rebellion, and to defray the expenses incurred in its suppression. The bill also forfeits the claims of all rebels, and those who give them aid and comfort, to the persons they hold in slavery, declares the slaves thus forfeited free, and makes it the duty of the President to provide for the colo-

nization of such of them as may be willing to go, in some tropical country, where they may have the protection of the Government, and be secured in all the rights and privileges of freemen. The property belonging to traitors, or those giving them comfort, who may be convicted by the judicial tribunals, is to be forfeited on their conviction: the realty for life, and the personal property forever. These are the main features of the bill I have introduced, accompanied with the details necessary to accomplish the objects indicated.

It will be observed that a distinction is made in the mode of forfeiture of rebel property in districts under insurrectionary control, and that which may be found in districts within the reach of the process of law in its ordinary forms; the forfeiture in the one case to be enforced through the military, and in the other through the judicial power. This is a matter of necessity, for it would be impossible to enforce the forfeiture through the courts in districts where the judicial power was overborne by the rebellion; and if not impossible, it would, in my judgment, be clearly unconstitutional to enforce it in any other way in districts where the property seized was within the reach of legal process. So also in the case of a conviction for treason, the property of the traitor within reach of the court can only be forfeited by the court, the personalty forever, and the real estate, under the Constitution, for life only.

The power of Congress to pass a bill of this character is, to my mind, unquestionable; but I do not place it on the ground which has been advanced in some quarters, that in times of war or rebellion the military is superior to the civil power; or that in such times what persons may choose to

call necessity is higher and above the Constitution. Necessity is the plea of tyrants, and if our Constitution ceases to operate the moment a person charged with its observance thinks there is a necessity to violate it, it is of little value. So far from admitting the superiority of the military over the civil power in time of war, or that there is any necessity that it should be so, I hold that under our Constitution the military is as much subject to the control of the civil power in war as in peace. The powers of government under our system are three, of which the military is not one. It is merely incident to the others, and subject to one of these, the legislative, without whose permission it can have no existence; and when called into being by the action of Congress, it is by the Constitution expressly made subject to such rules as Congress shall prescribe for its government.

When, therefore, our armies, to raise and support which Congress has express authority under the Constitution, go forth to suppress insurrection, and in doing so shoot down rebels and desolate their abodes, as they constitutionally may, they are as much subordinate to the civil power as when engaged in a holiday parade in time of peace; and contraband property seized and appropriated by the military in insurrectionary districts in suppression of the rebellion, is as legitimately taken as if condemned to forfeiture by the judicial authorities in districts in which judicial process was not obstructed. I want no other authority for putting down even this gigantic rebellion than such as may be derived from the Constitution properly interpreted. It is equal even to this great emergency; and the more we study its provisions, the more it is tried in troublous times, the greater will be our admiration of the instrument and our veneration for the wisdom of its authors.

As unpopular as the avowal may for the moment be among the thoughtless, I here declare that I am for suppressing this monstrous rebellion according to law, and in no other way; and I believe that Congress has only to discharge its duty, and the Army perform its, with energy and activity, to bring the war to a speedy and successful issue. We are fighting to maintain the Constitution, and it especially becomes us—in appealing to the people to come to its rescue—not to violate it ourselves. How are we better than the rebels, if both alike set at naught the Constitution? I warn my countrymen, who stand ready to tolerate almost any act done in good faith for

the suppression of the rebellion, not to sanction usurpations of power which may hereafter become precedents for the destruction of constitutional liberty.

The Constitution declares that Congress shall have power “to declare war,” and “make rules concerning captures on land and water,” “to raise and support armies;” “to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions,” and “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.” Acting under these grants of power, Congress has provided for bringing into service more than half a million of men who are now engaged in suppressing the insurrection; and has to some extent made rules for the government of these forces, which, as far as they go, are obligatory on them; but in the absence of any regulation as to how the Army is to be used in suppressing the insurrection, its commander would be at liberty to make such use of it, consistent with the rules of civilized warfare, as he believed most conducive to the service of the State, and best calculated to secure the end for which it was called into being; upon the principle that every man intrusted with an employment, or duty, is presumed to be invested with all the power necessary to enable him to perform the service. Hence the authority of the Army in the suppression of an insurrection to seize, imprison, or shoot the insurgents, to desolate the country they occupy, to seize and appropriate for the time being their property and free the persons they hold in bondage, is as ample and complete under the Constitution as that of a court in peaceful times to arrest, imprison, try, and execute a murderer.

That the judicial tribunals have no right or power to interfere with the Army in the exercise of its powers in suppressing an insurrection, either by issuing writs of *habeas corpus* or otherwise, is apparent, from the fact that the only ground on which the military authority can be invoked at all, is, that the judicial tribunals being overborne, are incompetent to the task. The judicial authority ceases at the very point where the military begins. It may be, and often is, a delicate question to determine this particular point, and decide in what localities the military, and in what judicial authority should have sway. This the Constitution has left to be provided for by

Congress, by declaring that it shall have authority to call forth the militia to suppress insurrection; and Congress, soon after the adoption of the Constitution, passed an act authorizing the President to call forth the militia for that purpose, whenever the laws of the United States were obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings; and by an act passed at the first session of the present Congress, the President is authorized in certain cases to declare the inhabitants of a State, or part thereof, in a state of insurrection, and make use of the Army to suppress it. The responsibility, therefore, of determining when and in what districts of the United States the military power may be used to suppress a rebellion is devolved by Congress on the Executive, and when the military power is called into requisition, the judicial authority can no more interfere with its action, than can the military with the judicial tribunals in time of peace. Under certain circumstances either may be called to the aid of the other. The courts sometimes make use of the military in aid of the execution of their powers, and the military would doubtless have like authority to make use of the aid of the judicial tribunals in districts under insurrectionary control, should they be deemed a proper means by the military power to aid in suppressing the rebellion. In each case the power called to the aid of the other, whether it be the military in time of peace to the assistance of the judicial, or the judicial in times of rebellion to the assistance of the military, would be subordinate to the power making the call.

In accordance with these principles it has been my object, in framing the bill under consideration, to distinguish between the property on which the military may operate and that subject to judicial control, and clearly to define the jurisdiction of each, confining the seizure and forfeiture of property situated in districts of the United States under insurrectionary control to the military power, and its condemnation and forfeiture in other portions of the United States to the judicial power. Whichever power first takes hold of the property within its jurisdiction would, upon principles of comity, retain possession till its final disposition; upon the same principle that of two courts of concurrent jurisdiction, the one which first gets possession of a case affecting either persons or property is entitled to retain jurisdiction till its final disposition. It is upon this principle also that persons captured by the military authorities in

insurrectionary districts may still be retained as prisoners by the military power, without interference from the courts till their cases are finally disposed of, notwithstanding they may, for purposes of safety, or other reasons of State, be brought within districts where the judicial power is in full operation.

Having shown that the military called forth under the Constitution to suppress an insurrection may be vested with all the power necessary to the end, consistent with the usages of civilized warfare, it follows that, if hostile armies may ever confiscate an enemy's property, the right of the United States to do it in case of the rebels is unquestionable, for surely no war was ever more atrocious than the one now being waged by the rebels for the overthrow of this Government. They surely cannot complain of treatment we would have a right to extend to foreign enemies. The right of seizure and confiscation of the property of the enemy as prize of war is a settled principle of international law which has been affirmed by our own Supreme Court. In the case of *Brown vs. the United States*, reported in the 8th Cranch, the court say:

"Respecting the power of Government no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court."

That case also decides that "the power of confiscating enemy's property is in the legislature." Wheaton, in commenting on the case, says:

"The property of an enemy cannot be seized and condemned as prize of war, without some legislative act expressly authorizing its confiscation. The court held that the law of Congress declaring war was not such an act. That declaration did not, by its own operation, so vest the property of the enemy in the Government as to support judicial proceedings for its seizure and confiscation. It vested only a right to confiscate, the assertion of which depended on the will of the sovereign power."

In regard to the transfer of private rights of property, Wheaton holds this further language:

"It is competent for the national authority to work a transmutation, total or partial, of the property belonging to the vanquished party; and if actually confiscated the fact must be taken for right. But to work such a transfer of proprietary rights, some positive and unequivocal act of confiscation is essential."

Most of the nations of Europe acquired title to the territory they possess by conquest, and private persons have derived their titles from that of the Government, thus obtained.

Without any special act of Congress, I presume no one questions that our military commanders, in the prosecution of the war in insurrectionary districts, may, for the time being, seize and make use of the property of the rebels and their slaves; but on the restoration of peace, the right of the owners would revive. Hence, if we would have uniformity of action among the commanders of our armies, and forfeit forever the property of rebels and their claims to the service of their fellow-men, it must be done by act of Congress. According to the modern usage of nations, private property of alien enemies on land has not generally been forfeited; but the right of forfeiture is unquestionable, and may be exercised if necessary to secure the just ends of the war, or in retaliation for forfeitures by the enemy. The rebels, wherever they have the power, have seized and confiscated the property of loyal men, and this, according even to modern usage as between independent nations, would give to the United States the right to confiscate in turn; much more would they possess that right as against rebels, who have causelessly taken up arms against the Government. The right to free the slaves of rebels would be equally clear with that to confiscate their property generally, for it is as property that they profess to hold them; but as one of the most efficient means for attaining the end for which the armies of the Union have been called forth, the right to restore to them the God-given liberty, of which they have been unjustly deprived, is doubly clear.

It only remains to inquire whether, in making use of lawful means to crush this wicked rebellion, it is policy to confiscate the property of rebels, and take from them the support of unrequited labor? Can there be a question on this point? Who does not know that treason has gained strength by the leniency with which it has been treated? We have dallied with it quite too long already. Instead of being looked upon as the worst of crimes—as it really is—it has come to be regarded as a trivial offense, to be atoned for by a promise to do so no more. The despoilers of loyal citizens, the conspirators against the peace of a nation, the plunderers of the public property, the assassins of liberty, when they have fallen into our hands, have been suffered to escape

on taking an oath of allegiance which many have not scrupled to violate the first opportunity. Thousands of industrious and enterprising business men ruined by this causeless rebellion; more than twenty million people now contributing of their means and their blood to its suppression; more than half a million men, as noble spirits as ever trod the earth in martial array, now encamped in tents and undergoing all the hardships of a winter campaign; thousands of others now confined in prisons, and some in dungeons, by the rebels; the blood of the disinterested, the noble-hearted, the dauntless and heroic Lyon; of the gifted, the eloquent, the brave and patriotic Baker, and of the hundreds of other loyal citizens and true men, shed by rebel hands, still uplifted for the slaughter of thousands more and the destruction of free government—these and a thousand other considerations all demand that the authors of these calamities, and others yet to follow, if they have the power to inflict them, should be made to suffer both in their persons and their property for the enormous crimes they have been and are committing against private rights and public liberty.

Besides, sir, not to confiscate the property of rebels, is to offer a premium to disloyalty, so long as they, wherever in power, confiscate the property of loyal citizens. Under such a policy, the rebels' property is safe, let who will triumph; while the man, true to his allegiance, his country, and his flag, is, if within their power, despoiled of all he possesses. Under such a policy, the path of safety for property is to place it on the road to treason. Is it any wonder that, under such a policy, treason, which at first had but a partial foothold in such States as Missouri and Tennessee, North Carolina and Virginia, has spread till in some of them it now has complete possession? The loyal citizen, in all the States where the rebels have sway, knows that the penalty for an avowal of his allegiance to his country is the forfeiture of all he has, while, if he forswears his allegiance, his property is alike protected by friend and foe. If we would bring this war to a successful issue, it is high time it was made as terrible to the enemies as to the friends of the Republic. Mercy and security to conspirators and rebels in arms against the Government, are cruelty and peril to loyal citizens struggling for the preservation of the Union and the maintenance of constitutional liberty. They who deny their allegiance to the Government have no right to

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claim its protection. Let the Government cease to afford it; deal with them and their property as their crimes deserve; prosecute the war with vigor, and it will soon be brought to a successful issue. It cannot be that twenty million people, armed in defense of constitutional government and regulated liberty, are to be overborne by less than one fourth their number fighting for the overthrow of free government, the establishment of an aristocracy, and the perpetuation and spread of human slavery.

But while fighting this battle in behalf of constitutional liberty, it behooves us especially to see to it that the Constitution receives no detriment at our hands. We will have gained but little in suppressing the insurrection, if it be at the expense of the Constitution; for the chains which

the bondman wears are none the lighter because they were forged by his own and not another's hands. As we expect to come out of this contest with our flag full and complete in all its proportions, not a stripe erased or a star obscured, so let us preserve the Constitution perfect in all its parts, with all its guarantees for the protection of life and liberty unimpaired, and the instrument itself rendered doubly dear from the fact that it has been sacredly maintained and proven equal to every emergency, under circumstances the most trying to which a nation was ever subjected. Then, when this struggle is over, we will have an assurance that our Government is stronger than ever before, and that constitutional liberty is established on a foundation which no human power will ever be able to subvert.

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